

Informal Dispute Resolution (IDR)

Procedures for Providers

Nursing Facilities and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID)

The IDR process affords facilities one informal opportunity to dispute deficiencies/violations cited by the Department of Aging and Disability Services (DADS). Facilities may dispute findings included in the 2567/3724 in order to demonstrate that the deficiency/violation should not have been cited and/or that the facility was in compliance with the cited regulation. If an explanation of the 2567/3724 is required, contact the DADS Regional Program Manager prior to submitting a request for an IDR.

The IDR process is not intended to resolve complaints regarding alleged surveyor misconduct, survey protocol, or Federal or State standards, or to provide an opportunity to clear previously corrected deficiencies or violations. The IDR process is not a formal appeals process. Some disputes are not appropriate for consideration in the IDR process, but may be appropriate for consideration in a formal appeals process.

It is the facility's responsibility to present sufficient information to the IDR Unit to support the desired IDR outcome. The facility is responsible for sending this information directly to the IDR Unit within the required timeframes.

IDR OUTCOMES

Possible outcomes of an IDR for nursing facilities and ICF/IID are:

- A determination that there is insufficient evidence to sustain a deficiency/violation;
- A determination that there is insufficient evidence to sustain a portion or a finding of a deficiency/violation;
- A determination that there is sufficient evidence to sustain a deficiency/violation; or
- A determination that there is insufficient evidence to sustain the deficiency/violation as cited but that there is sufficient evidence to sustain a different citation.

Possible additional outcomes of an IDR for nursing facilities only include:

- A determination that there is insufficient evidence to sustain the severity and scope assessment but that there is sufficient evidence to sustain a reduced severity and scope assessment (for Immediate Jeopardy or Substandard Quality of Care only); or
- A determination that there is sufficient evidence to sustain the severity and scope assessment as cited.

IDR PROCESS

TIMEFRAMES

- The IDR Request Form must be received by the IDR Unit within 10 calendar days¹ of the facility receiving the official Statement of Deficiencies/Licensing Violations (2567/3724) from DADS.
- Two identical copies of the rebuttal letter and supporting documentation must be received by IDR within five calendar days of submitting the IDR Request Form.
- All IDR informal conferences must be conducted by the 22nd calendar day from receipt of the request for an IDR.
- The IDR Recommendation and Rationale report will be distributed by HHSC within 30 calendar days from the receipt of the IDR Request Form.

IDR REQUEST FORM

- A fax cover sheet should be used with all faxed information to identify the facility, exit date, and appropriate contact information. Alternatively, facilities may elect to submit the IDR Request Form via e-mail attachment and include the facility name and exit date in the subject line of the email.
- IDRs will not be granted when IDR Request Forms are incomplete or inaccurate.
- All IDR correspondence will be provided to the individual identified as the person representing the facility in the IDR process. If an attorney is listed on the IDR Request Form, all IDR correspondence, including the final IDR Recommendation and Rationale, will be sent to the attorney only.

***Only those deficiencies/violations listed on the IDR Request Form and addressed in the rebuttal letter/supporting documentation will be reviewed.**

REBUTTAL LETTER

The IDR Unit must receive two identical copies of the rebuttal letter and supporting documentation within five calendar days of submittal of the IDR Request Form. One copy will be retained by the IDR Unit to perform the IDR. The second copy will be forwarded by the IDR Unit to DADS.

The purpose of the rebuttal letter is to present the facility's position factually and concisely. The rebuttal letter is the facility's opportunity to present reasons why the deficiency/violation is disputed and to provide information that demonstrates the facility was in compliance at the time of the survey.

The rebuttal letter is a written statement that includes:

- All deficiencies/violations disputed, including the reason the deficiency/violation is disputed.
- The desired outcome for each disputed deficiency/violation.

¹ According to Tex. Gov't Code §311.014, if the designated due date falls on a Saturday, Sunday, or legal holiday, the due date becomes the following business day.

- References to attachments (i.e. care plans, Individual Program Plans (IPPs), nurse's notes, physician's orders, etc.) or information that demonstrates the deficiency/violation should not have been cited. The relevance of the attachments or information should be explained in the rebuttal letter.

***Documentation that does not meet the above criteria may not be reviewed and/or the facility's position may not be clear.**

SUPPORTING DOCUMENTATION

The rebuttal letter should be supported by attachments (supporting documentation). An exception would be that the rebuttal letter explains the sole basis of the facility's rebuttal is that the information in the 2567/3724 does not establish a deficient practice. Supporting documentation:

- May include documentation from appropriate facility records. For example, if the dispute is regarding information within a resident's care plan that the surveyor found deficient, the care plan may be submitted.
- May include facility specific forms that are referenced in the survey findings (i.e., menu's). If facility specific forms are submitted, an explanation of the form may be necessary.
- Must be legible documents. If the document is illegible or difficult to read, provide a copy of the original document and a typed version or neatly written transcription of the information. Illegible documents that are not adequately transcribed cannot be reviewed. Documentation written in languages other than English must include an English translation.
- May include references to professional standards or common standards of practice. If applicable, submit a copy of the relevant portion of the source or professional standard cited.

Attachments should be:

- Non-duplicative;
- Cross referenced in the rebuttal letter and be organized by deficiency/violation.
- Tabbed, labeled, or otherwise identified with consecutive numbers or letters.
- Highlighted to show the appropriate narrative, text, or information in the attachments.

***All information submitted must have existed at the time of the survey.**

Do not submit:

- The 2567/3724.
- The Plan of Correction (subject to rare exception); it is not a rebuttal and is rarely relevant to the IDR review.
- Copies of Federal or State standards.
- De-identified documents.
- Information that took place after the survey exit date (subject to rare exception).

- Complaints about a surveyor, the survey process, or survey protocol. Consideration of this information is outside the scope of the IDR process. Complaints can be submitted in writing to the following:
 - RegInternal.Investigations@dads.state.tx.us, or
 - Compliance and Oversight; P.O. Box 149030, mail code E353, Austin TX 78714

IDR CONFERENCES

Providers may request an IDR conference (phone or face-to-face). There is no difference in the procedures for phone and face-to-face conferences. The IDR Unit must schedule the IDR conference to occur on or before the 22nd day of the IDR process.

The IDR conference is an opportunity for the facility to emphasize or explain information from their rebuttal to support their position. Representatives from both parties (facility and DADS) may participate in the IDR conference. No new information may be presented at the IDR conference.

SHARING OF INFORMATION

During the review process, HHSC may request additional information from the facility or DADS. Both parties will be notified of the request for additional information and have until the end of the second business day after notification to respond to the request. The opposing party will be provided with copies of the response submitted to HHSC.

Similarly, any information related to an IDR request that is received by HHSC from either the facility or DADS will be made available by HHSC to the opposing party. Parties have until the end of the second business day after receipt of such shared IDR information to respond to HHSC about that information. HHSC will share any responses with the opposing party.

IDR RECOMMENDATION

The IDR Unit will complete the review and distribute an IDR Recommendation and Rationale to the facility and DADS no later than the 30th calendar day after receipt of the IDR request. The distribution of the IDR Recommendation and Rationale completes the IDR process.